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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,877	08/21/2003	Sang K. Sheem		1025

7590 08/25/2005

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EXAMINER
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NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/646,877

Applicant(s)

SHEEM, SANG K.

Examiner

Kenneth W. Noland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-15 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10,12 -15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 recited "the wire members" and this implies that the matter has already been recited. Correction is required. Claim 12 on line 11 recites, "trail" and this is incorrect. In claim 13 on line 7 recites "the display" and "the shelf", and this implies that the structure has already been recited. Correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,5,6,8 and 11 and 12 are rejected under 35 U.S.C. 102(\*b\*\*) as being \*\*anticipated\* by \*\*Delaney. Delaney shows in figure 1 the shelf 70 to support a product (beverage), which is enclosed in the 'under-sized' enclosure\*. Note the two stops 40 and the lifting arm 80 to pivot through and between the stop members to lift the product over the stops and by the forward pressure of the rearward products (see col 3, lines 1-18).. In regard to claim 12, note the supporting 'rail' members 10 and 20 to effect the proper orientation of the product as the product would be guided or 'leaned' there against.

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over \*Delaney in view of Howard et al. To provide Delaney's device for a weight would be obvious in view of the teachings of Howard et al's use of the weight 45 in figure 5 and also having a 'wedged' shape so as to better provide for forward pressure on the products.\*\*.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over \*\*Delaney in view of Springs. To provide Delaney's device for a spacer would be obvious in view of the teachings of Springs' use of the spacer 36 to create a space between the produce (see col 4, lines 12-16).\*.

8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over \*Delaney in view of Walton. To modify Delaney's stop members for wire members would be obvious in view of the teachings of Walton's use of the wire stops 22 shown in figure 2 to form the stops from light weight material.\*\*.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over \*Delaney in view of Dewsnap. As claim 12 would be understood, to provide Delaney's device for a support rail would be obvious in view of the teachings of Dewsnap's use of

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the overhead support rail 12 to support the articles and provide for a guide and effect a stable orientation of the articles.

10. \*\*Claims 1,5,8 are\*\*\* rejected under 35 U.S.C. 102(\*\*b\*) as being \*anticipated \*\* by \*\*Danielson et al. Danielson et al shows in figure 2 the shelf 12 to hold an under sized product. Note the stop member 12a and the lifting arm 26 to lift the product up so as to topple the product over the stop member.\*.

11. If the indefiniteness of claim 13 is corrected, then claims 13-15 would be considered allowed.

12. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W. Noland whose telephone number is (571) 272-6941. The examiner can normally be reached on Monday-Thursday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*Kenneth W. Noland 8/25/2005*  
**KENNETH W. NOLAND**  
**PRIMARY EXAMINER**